

REMARKS

I. Introductory Comments

Claims 1-82 and 84 are pending. Claims 1, 2, 11, 18, 20, 22, 26, 28, 29, 38, 45, 47, 49, 53, 55, 56, 65, 72, 74, 76, 80, 82, and 84 are independent claims. Claims 2, 11, 15, 16, 22, 24, 29, 38, 42-43, 49, 51, 56, 58-67, 69-71, 76, 78, and 79 are amended. Claims 1, 3, 14, 18-21, 23, 26-28, 30, 41, 45-48, 50, 53-55, 57, 68, 72-75, 77, 80-82, and 84 are canceled herein. Therefore, claims 2, 4-13, 15-17, 22, 24-25, 29, 31-40, 42-44, 49, 51, 52, 56, 58-67, 69-71, 76, 78, and 79 remain pending, of which claims 2, 11, 22, 24, 29, 38, 49, 51, 56, 65, 76, and 78 are independent claims.

In the Office Action, the Examiner rejected claims 2-17, 20-25, 55-82 and 84 under 35 U.S.C. 101 because the claimed invention is allegedly directed to non-statutory subject matter.

Claims 1, 2, 6-13, 18-22, 26-29, 33-40, 45-49, 53-56, 60-67, 72-76, 80-82 and 84 were rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent Publication No. 2004/0093521 A1 (Hamadeh).

Applicants wish to thank the Examiner for the indication of allowable subject matter in claims 3-5, 14-17, 23-25, 30-32, 41-44, 50-52, 57-59, 68-71 and 77-79, subject to overcoming the section 101 rejections.

In view of the following arguments, all claims are believed to be in condition for allowance over the references of record. Therefore, this response is believed to be a complete response to the Final Office Action.¹ Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully requests that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

¹. As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future.

II. Allowable Subject Matter

The Examiner indicated the allowability of claims 3-5, 14-17, 23-25, 30-32, 41-44, 50-52, 57-59, 68-71 and 77-79, if written in independent form including the base claim, objected claims and intervening claims, subject to overcoming the section 101 rejection. Applicants thank the Examiner for the indication of allowable subject matter.

A. The allowable claims are rewritten in independent form

Claim 3, an allowable claim, is herein combined with claim 2, resulting in allowable independent claim 2. Claims 4-10 depended on original claim 2, therefore, claims 4-10 are also allowable.

Claim 14, an allowable claim, is herein combined with claim 11, resulting in allowable independent claim 11. Claims 12, 13, and 15-17 depended on original claim 11, therefore, claims 12, 13 and 15-17 are also allowable.

Claim 23, an allowable claim, is herein combined with claim 22, resulting in allowable independent claim 22.

Claim 24, an allowable claim, is herein amended by incorporating the language of original claim 22, resulting in allowable independent claim 24. Claim 25 depended on original claim 24, therefore, claim 25 is also allowable.

Claim 30, an allowable claim, is herein combined with claim 29, resulting in allowable independent claim 29. Claims 31-37 depended on original claim 29, therefore, claims 31-37 are also allowable.

Claim 41, an allowable claim, is herein combined with claim 38, resulting in allowable independent claim 38. Claims 39, 40 and 42-44 depended on original claim 38, therefore, claims 39, 40 and 42-44 are also allowable.

Claim 50, an allowable claim, is herein combined with claim 49, resulting in allowable independent claim 49.

Claim 51, an allowable claim, is herein amended by incorporating the language of original claim 49, resulting in allowable independent claim 51. Claim 52 depended on original claim 51, therefore, claim 52 is also allowable.

Claim 57, an allowable claim, is herein combined with claim 56, resulting in allowable independent claim 56. Claims 58-64 depended on original claim 56, therefore, claims 58-64 are also allowable.

Claim 68, an allowable claim, is herein combined with claim 65, resulting in allowable independent claim 65. Claims 66, 67, and 69-71 depended on original claim 65, therefore, claims 66, 67, and 69-71 are also allowable.

Claim 77, an allowable claim, is herein combined with claim 76, resulting in allowable independent claim 76.

Claim 78, an allowable claim, is herein amended by incorporating the language of original claim 76, resulting in allowable independent claim 78. Claim 79 depended on original claim 78, therefore, claim 79 is also allowable.

B. The amended allowable claims overcome the section 101 rejection

Applicants submit that the amended claims overcome the section 101 rejection.

1. Claims 2, 4-13, 15-17, 22, 24, 25

The Examiner rejected claims 2, 4-13, 15-17, 22, 24 and 25 as being not tied to statutory subject matter.

The Interim Examination Instructions for Evaluating Subject Matter Eligibility under 35 U.S.C. § 101 (Interim Instructions), issued by the USPTO in August 2009, state that an examiner should examine a process claim under section 101 using the machine or transformation test. The Interim Instructions further state:

In accordance with the M-or-T test, the claimed process must:
(1) be tied to a particular machine or apparatus (machine implemented); or
(2) particularly transform a particular article to a different state or thing.

...
For computer implemented processes, the “machine” is often disclosed as a general purpose computer. In these cases, the general purpose computer may be sufficiently “particular” when programmed to perform the process steps.

Independent claim 2 is illustrative for an amendment made to independent claims 2, 11 and 22. Claim 2 as amended recites in part a “computing device programmed to” perform the steps of the method claim, and therefore meets at least the machine prong of the M-or-T test, and the rejection under section 101 should be withdrawn. For similar reasons, the section 101 rejection of independent claims 11 and 22, and dependent claims 4-10, 12-13, 15-17 and 24-25 should be withdrawn. The specification supports “a computing device” in paragraph 87, and by Computer 800 in Figure 8.

2. Claims 56, 58-67, 69-71, 76, 78, 79

Claims 56, 58-67, 69-71, 76, 78, and 79 were rejected by the Examiner because, according to the specification, a “computer readable medium” could be carrier waves, and therefore the claims are allegedly drawn to non-statutory subject matter.

Independent claim 56 is illustrative for an amendment made to independent claims 56, 65, 76, and 78. Claim 56 as amended recites in part, “A tangible computer readable medium having stored thereon instructions . . .” Therefore, claim 56 is tied to at least the statutory class of machine through the term “tangible computer readable medium,” and the rejection under section 101 should be withdrawn. For similar reasons, the section 101 rejection of independent claims 65, 76 and 78, and dependent claims 58-64, 66, 67, 69-71, and 79 should be withdrawn.

CONCLUSION

All rejections have been addressed. In view of the above, the presently pending claims are believed to be in condition for allowance. Accordingly, reconsideration and allowance are respectfully requested and the Examiner is respectfully requested to pass this application to issue. It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013, under order number 65632-0210. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

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